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May 17, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Review of the Commission's Regulations
Governing Television Broadcasting
(MM Docket Nos. 91-221 and 87-8)

Dear Mr. Caton:

Transmitted herewith, on behalf of Citicasters Co., are an original and nine copies of its Comments in the above referenced rulemaking proceeding.

In the event there are any questions concerning this matter, please communicate with this office.

Very truly yours,

Morton J. Posner

Enclosure

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	
Review of the Commission's	)	MM Docket No. 91-221
Regulations Governing	)	
Television Broadcasting	)	
	)	
Television Satellite Stations	)	MM Docket No. 87-8
Review of Policy and Rules	)	

TO: The Commission

COMMENTS OF CITICASTERS CO.

CITICASTERS CO.

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Its Attorneys

May 17, 1995

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Summary

Citicasters supports elimination of the radio/television cross-ownership rule ("one-to-a-market" rule), 47 C.F.R. § 3555(c). The Commission's experience in evaluating ad hoc requests to permit joint radio/television ownership has shown that the public interest has been served by rule waivers in virtually all cases and that the radio and television duopoly rules, by themselves, are an effective means of limiting undue market concentration and ensuring viewpoint diversity and economic competition. Elimination of the one-to-a-market rule would therefore eliminate a burdensome layer of administrative process that is no longer necessary or in the public interest.

If the Commission nonetheless decides to retain some vestige of the one-to-a-market rule, the Commission should modify the present top 25 market waiver standard to permit automatic waivers in radio/television markets of all sizes which have at least 20 media "voices."

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of the Commission's Regulations Governing Television Broadcasting	)	MM Docket No. 91-221
	)	
Television Satellite Stations Review of Policy and Rules	)	MM Docket No. 87-8

TO: The Commission

COMMENTS OF CITICASTERS CO.

Citicasters Co. ("Citicasters"), by its attorneys, hereby comments on the Further Notice of Proposed Rulemaking ("Notice") released January 17, 1995 in the above-captioned proceedings.

While the Notice seeks comment on a number of television ownership issues, Citicasters confines these comments to the proposed examination of the radio/television cross-ownership rule ("rule" or "one-to-a-market rule") contained in 47 C.F.R. § 3555(c). See Notice at ¶¶ 124-32. Citicasters supports elimination of the one-to-a-market rule and recommends that the Commission rely instead on the separate radio and television local ownership limits to prevent undue local market concentration. Alternatively, Citicasters supports modification of the Commission's present "automatic" top 25 market waiver standard and application of that standard, by rule, to all size markets.

Citicasters and its predecessors, Great American Radio and Television Company, Inc. ("Great American") and Taft Broadcasting Company, are longtime Commission licensees. Currently, Citicasters is the licensee of 14 radio and two television stations. Citicasters and its predecessor companies have previously been granted four waivers of the one-to-a-market rule, and have a fifth waiver request pending.[1] The existence of the one-to-a-market rule materially affects Citicasters' business decisions with respect to proposed acquisitions.

I. The Commission's Substantial Experience in Considering One-To-A-Market Waiver Requests Has Demonstrated that the Present Rule Serves No Useful Purpose.

Since its inception in 1970s, the purpose of the one-to-a-market rule has been to promote two specific goals in media

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[1] The Commission granted a permanent waiver of the rule to permit Great American's continued ownership of AM-FM-TV combinations in the Cincinnati and Kansas City media markets. Great American Television and Radio Co., Inc., 4 FCC Rcd 6347 (1989). Great American subsequently decided to confine its radio broadcast efforts in Cincinnati to FM service and sold its AM station. Recently, the Commission granted a waiver of the rule to permit Citicasters' acquisition of a second FM station in Cincinnati. Secret Communications L.P., FCC 95-154 (released Apr. 19, 1995).

In addition, the Commission granted a waiver of the rule to permit Great American's creation of a TV-FM combination in the Tampa-St. Petersburg-Clearwater media market. Gulf Coast Radio, Inc., 5 FCC Rcd 87 (1990). Currently pending before the Commission is Citicasters' request for a waiver of the rule to permit the acquisition of a second FM that market. See FCC File No. BALH-950314GL.

markets: viewpoint diversity and economic competition.[2] To that end, the Commission prohibited joint ownership of a radio station (or AM-FM combination) and a television station in the same market. In 1989 the Commission relaxed its one-to-a-market rule to permit common ownership of radio-television combinations by waiver, subject to the local ownership limits, under three separate standards.[3] First, the Commission looks favorably upon waiver requests in the top 25 television markets where there will be at least 30 separately owned, operated and controlled broadcast licensees or, as they are commonly called, "voices."[4] Second, the Commission also looks favorably upon waiver requests involving "failed" stations which have not been operated for a substantial period of time and/or are in financial difficulty.[5] For all other waiver requests, the Commission applies a third, case-by-case standard. Under this analysis, the Commission considers: (1) the potential public service benefits of joint operation of facilities; (2) the types of facilities involved; (3) the number of media outlets owned by the applicant in the market; (4) the financial difficulties of the station to be

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[2] See Second Report and Order ["Waiver Standard Order"], MM Docket No. 87-7, 4 FCC Rcd 1741, 1742, recon. granted in part and denied in part, 4 FCC Rcd 6489 (1989).

[3] See id. at 1750-54.

[4] 47 C.F.R. § 3555(c), n.7(1).

[5] Id., n.7(2).

acquired; and (5) the competition and diversity after the joint operation is implemented.[6]

A waiver request, particularly under the five-part case-by-case standard, necessarily requires a detailed examination of the media market in question. To make a satisfactory showing under the case-by-case standard, an applicant typically must include as much of the following information as is available or relevant: (1) ratings for each of the proposed commonly owned stations; (2) lists of the call signs, communities of license, and owners of the radio and television "voices" in the market, as well as identification of all the commonly owned media outlets; (3) lists of the daily and weekly newspapers in the market; (4) figures for the number of cable franchises in the communities which make up the market, as well as the percentage of cable penetration; (5) detailed estimates of the proposed cost savings, economies of scale, and program service benefits which would occur due to joint ownership; (6) information about the financial health of the station that is for sale; and (7) information concerning the facilities of stations owned and proposed to be owned by the party seeking a waiver. Since a waiver request must be so detailed, the Commission has gained through the waiver process a broad overview of the character of local media markets.

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[6] See Waiver Standard Order, 4 FCC Rcd at 1753. Not every factor is relevant in every case, particularly when a strong showing has been made that the public interest would otherwise be served by a waiver. Waiver Standard Recon. Order, 4 FCC Rcd at 6491.

The Commission's experience with the waiver process has seen the public interest served by grants of 39 waivers.[7] To our knowledge, based on reported cases, only two waiver requests have been denied, with those denials having involved unusual and unique circumstances.[8] Applicants for waivers have shown that

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[7] See Secret Communications L.P., FCC 95-154 (released Apr. 19, 1995); Hombres Enterprises, Inc., FCC 95-125 (released Apr. 6, 1995); Burt H. Oliphant, FCC 95-61 (released Mar. 7, 1995); Golden West Broadcasters, FCC 94-361 (released Feb. 21, 1995); First Broadcasting Co., FCC 95-54 (released Feb. 14, 1995); Salt of the Earth Broadcasting, Ltd., 9 FCC Rcd 3621 (1994); Buckley Broadcasting Corp. of Calif., 9 FCC Rcd 1930 (1994); Viacom, Inc., 9 FCC Rcd 1577 (1994); BREM Broadcasting, 9 FCC Rcd 1333 (1994); KVI, Inc., 9 FCC Rcd 1330 (1994); Scripps-Howard Broadcasting Co., 8 FCC Rcd 8012 (1993); Hispanic Radio Broadcasters, 8 FCC Rcd 6406 (1993); Moosey Communications, Inc., 8 FCC Rcd 5246 (1993); Dennis Elam, 8 FCC Rcd 5185 (1993); Malrite Communications Group, Inc., 8 FCC Rcd 4212 (1993); D & D Broadcasting, Inc., 7 FCC Rcd 8082 (1992); Ligget Broadcast, Inc., 7 FCC Rcd 7124 (1992); Com III TV, Inc., 7 FCC Rcd 3613 (1992); Ramar Communications, Inc., 7 FCC Rcd 3310 (1992); Radio Management Services, Receiver, 7 FCC Rcd 2959 (1992); United Radio Group, Inc., 7 FCC Rcd 2207 (1992); Guy Gannett Publishing Co., 7 FCC Rcd 1787 (1992); Midwest Communications, Inc., 7 FCC Rcd 159 (1991); Susquehanna Radio Corp., 6 FCC Rcd 6547 (1991); Gillet Broadcasting of Md., Inc., 6 FCC Rcd 81 (1990); South Central Communications Corp., 5 FCC Rcd 6697 (1990); Dorothy J. Owens, 5 FCC Rcd 6615 (1990); Hector Nicolau, 5 FCC Rcd 6370 (1990); Kyles Broadcasting, Ltd., 5 FCC Rcd 5846 (1990); Glendive Broadcasting Corp., 5 FCC Rcd 2936 (1990); The Helen Broadcasting Co. L.P., 5 FCC Rcd 2829 (1990); Perry Television, Inc., 5 FCC Rcd 1667 (Rev. Bd. 1990); Tulsa 23, 5 FCC Rcd 727 (1990); Dennis J. Kelly, Esq., 5 FCC Rcd 507 (1989); Gulf Coast Radio, Inc., 5 FCC Rcd 87 (1990); Group W Radio Acquisition Co., 4 FCC Rcd 8343 (1989); Great American Television and Radio Co., Inc., 4 FCC Rcd 6347 (1989); Howard J. Braun, Esq., 4 FCC Rcd 5795 (1989); Duane J. Polich, 4 FCC Rcd 5596 (1989); Capital Cities/ABC, Inc., 4 FCC Rcd 5498 (1989).

[8] Kargo Broadcasting, Inc., 5 FCC Rcd 1260 (1990), involved the proposed acquisition of a commercial FM station in the Salt Lake City, Utah market by Bonneville International Corp. Bonneville and related entities, all controlled by the Church of Jesus Christ of Latter-Day Saints, owned a commercial AM and a commercial VHF television station in Salt Lake City, as well as a the second largest daily newspaper in that community. In

local media competition is robust in virtually all markets, and that a plethora of "voices" is the rule rather than the exception. Moreover, waiver applicants have consistently shown that operating efficiencies made possible by joint radio-television ownership produce significantly improved broadcast service for the listening and viewing public. The Commission's experience in evaluating waiver requests on an ad hoc basis has thus shown that the public interest would be served by waivers in virtually all cases. Under these circumstances, there is no apparent need for a general rule.

This conclusion is further supported by the fact that the Commission's radio and television duopoly rules are an effective means of limiting undue market concentration and ensuring

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addition, the Church owned a non-commercial FM and a non-commercial VHF television station in Provo, Utah. While the Commission denied the request solely under the one-to-a-market rule focusing on the powerful signal strength of each of the stations, it was clearly troubled by the extensive newspaper and commercial/non-commercial broadcast interests that were also involved.

NewCity Communications of Mass., Inc., FCC 95-117 (released May 5, 1995), involved the proposed acquisition of a commercial FM station in the Atlanta market by WSB, Inc., a subsidiary of Cox Enterprises, Inc. Cox owns a commercial AM-FM-TV combination in Atlanta, as well as the two most widely circulated daily newspapers in that city. The Commission noted that Cox already owns broadcast facilities with the most powerful signal strength possible in each class of service. In addition, Cox's two newspapers held "substantially stronger market positions" than the newspaper interest held by the proposed assignee in Kargo. Id. at ¶ 14. Like Kargo, therefore, this case involved a unique combination of media interests.

diversity.[9] These rules provide clear ceilings for local common ownership of both radio stations and television stations. The additional overlay of one-to-a-market rules would be required only if radio stations and television stations were ready substitutes for each other for either competition or diversity purposes.

In reality, radio and television compete in distinctly different markets. The peak listening audience for radio is during morning drive time while the peak viewing audience for television is during evening prime time. The demographics of the audiences also differ, with radio stations tending to be much more narrowly focused in their demographic appeal. Radio and television are also disparate advertising media, as some advertising is more effective visually than aurally. In practice, advertising time is sold differently for radio and television, and where Citicasters jointly owns radio and television stations, advertising sales staffs are separate.[10] In sum, radio and television are not ready substitutes and the Commission correctly found in the Notice that these media do not

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[9] The Commission's present radio and television duopoly rules limit the number of television stations and the number of radio stations that a single person or entity may own in a given market. 47 C.F.R. § 73.3555(a) & (b).

[10] Joint radio and television ownership permits combined advertising department administration and billing but generally not combined advertising sales.

compete in the same local advertising, program production, or diversity markets.[11]

II. The One-To-A-Market Rule No Longer Serves the Public Interest.

Since the local ownership limits prevent undue concentration in either the radio or television markets, and since ad hoc consideration of one-to-a-market waiver requests has shown that cross-ownership is consistent with the public interest in virtually all cases, the one-to-a-market rule is no longer necessary. That being the case, the present rule wastefully consumes the time and resources of both applicants and the Commission.

As described above, parties seeking waivers must compile a detailed showing with respect to all of the factors listed at pages 3-4, supra. These showings are expensive and time consuming for applicants to assemble and for the Commission's staff to process. Moreover, much of the information is constantly changing, which may require amendments to existing showings on file with a pending application.

The process also results in inordinate delays in processing applications. On average, the Commission has required approximately 10.5 months to consider a request analyzed under the case-by-case waiver standard. Requests under the top 25

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[11] See Notice at ¶¶ 24, 125, 127, 131.

market/30 "voices" and "failed" station standards, which require less information in the waiver showing, are before the Commission an average of approximately four months and nine-and-a-half months, respectively.[12] Since virtually all such waiver requests are granted, this process needlessly consumes the Commission's time and resources. In addition, delays in otherwise permissible station acquisitions have a serious adverse effect on the stability of operation of many of the stations involved, owing to uncertainties on the part of advertisers and station staffs that inevitably exist whenever a station sale is pending.

III. If the Commission Retains Any Version of a One-To-A-Market Rule, It Should Modify the Present Top 25 Market Waiver Standard and Apply that Standard in Markets of All Sizes.

As discussed, only a minuscule percentage of waiver requests have been denied, illustrating that the required public interest standard is satisfied in a vast majority of cases. If the Commission nonetheless decides to retain some vestige of the one-to-a-market rule, it should modify the present top 25 market waiver standard and apply it in markets of all sizes.

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[12] The processing times were calculated by averaging the length of time between the dates decisions in reported waiver cases were adopted and the dates the underlying assignment applications were filed. Thus, the figures understate the processing delay as they do not account for delays in the issuance of texts of Commission decisions. Transaction closing dates are commonly geared to FCC finality, which in turn is geared to the release date of a Commission text.

Specifically, automatic waivers should be granted by rule to proposed acquisitions in radio-television markets of any size which have 20 or more separately owned "voices."

Should the Commission decide to retain some version of a one-to-a-market rule, the basis for such a decision would presumably be that, contrary to the Commission's own tentative finding in the Notice, radio and television are ready substitutes for each other for either competition or diversity purposes and that this fact may outweigh the economic efficiencies in joint ownership of radio and television stations that have been amply demonstrated in past waiver cases. The primary relevant factor under a rule justified on this basis would be the number of separately owned "voices" in a given market, and the weight to be afforded that factor should be the same without regard to market size. Accordingly, if the Commission determines that it should codify an "automatic waiver" standard, that standard should (apart from the special circumstances of failing stations) be based solely on the number of separately owned radio and television voices that would exist after a proposed acquisition.

The only remaining question is what minimum number of voices should be required. We submit that the explosive growth of radio, television and other media since the rules were adopted warrants a significant reduction in the current 30 "voices" standard. Since the one-to-a-market rule was instituted in 1970, the number of full power broadcast outlets has increased 64.5

percent.[13] In addition, there are 1,176 percent more cable subscribers today than in 1970.[14] As described in the Notice, "wireless" cable, direct broadcast satellite systems, satellite master antenna television systems, and video dialtone are now all emerging competitors in the programming market. The public has access to more programs and viewpoints than ever before. This trend is not likely to change. When the Commission adopted the 30 "voices" threshold, it noted that number was conservative.[15] Due to subsequent media growth, the Commission may now safely reduce to 20 the number of "voices" which represent adequate competition and diversity in a market.

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[13] This growth is reflected in the following chart.

Year	FM	AM	TV	Total
1970	4,370	2,722	1,035	8,127
1995	6,927	4,913	1,531	13,371

Broadcast Station Totals as of April 30, 1995, FCC News Release (released May 10, 1995); Waiver Standard Order, 4 FCC Rcd at 1743 n.11 (citation omitted).

[14] In 1970 there were 4.5 million cable subscribers; in 1994 there were 57.4 million subscribers. Implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992 -- Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, CS Docket No. 94-48, at ¶ 19 (released Sept. 28, 1994); Waiver Standard Order, 4 FCC Rcd at 1743 n.13 (citation omitted).

[15] [W]e believe that our "top 25 markets/30 voices" standard is conservative and may far exceed the market size and the number of voices necessary to ensure diversity and prevent competitive abuses." Waiver Standard Order, 4 FCC Rcd at 1751.

IV. Conclusion.

An examination of the Commission's one-to-a-market rule waiver process illustrates that the rule is no longer necessary or in the public interest. The current local ownership limits are sufficient to prevent undue local market concentration and to guarantee viewpoint diversity and competition. The elimination of the rule would speed the assignment application process, promote greater certainty in the broadcasting industry, and eliminate a layer of burdensome administrative process both for applicants and the Commission.

Respectfully submitted,

CITICASTERS CO.

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